



## REGIONAL PERMIT

Effective Date: August 14, 2008

Expiration Date: August 14, 2013

### I. AUTHORITIES

08-RP-40 (“Regional Permit 40” or “RP”) authorizes the maintenance dredging and/or excavation of non-tidal waters of the United States (e.g. rivers, streams, lakes, and/or ponds) which would have minimal environmental impacts, subject to limitations and conditions as set out further herein.

Types of projects which may qualify for this RP include, but are not limited to, the following:

1. Activities involving the removal of sediment and debris where such an activity would prevent loss of property or to reduce flooding and/or erosion. For example, activities that may fall in this category are activities necessitated after a catastrophic event, including flooding, fire, windstorm, etc. However, this RP does not authorize any rechannelization, channel realignment, channel widening, deepening, straightening, or levee construction.
2. Maintenance dredging of serviceable impoundments and outfall channels, including stormwater management facilities, detention and retention ponds, flood control structures, private and public lakes and ponds, etc. to reestablish their original design contours and capacity

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Comment [REG1]: Added maintenance of outfall channels to this activity for those that may exceed the limits for maintenance allowed in NWP-3.

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, permits are required from the Army Corps of Engineers for construction, dredging, and filling in waters of the United States. The Corps has issued several nationwide permits that authorize work to be performed without prior notification to the Corps provided certain conditions are met. In addition, Section 404(f) of the Clean Water Act specifically exempts certain types of discharges from permit requirements associated with agriculture and post-flood-related activities.

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In response to the need for a more streamlined review of permit requests that do not meet the qualifications of the aforementioned exemptions or Corps nationwide permits, the people of the Commonwealth of Virginia are hereby authorized to perform maintenance dredging and/or excavation in non-tidal waters of the United States (e.g., rivers, streams, lakes, and ponds) where such dredging and/or excavation would have minimal environmental effects, and where such dredging and/or excavation meets all limitations and conditions set out further herein.

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### II. STATE AND LOCAL APPROVALS

1. Prospective permittees (“permittees”) may be required to obtain additional state and/or local approvals prior to commencement of work in waters of the United States from the Virginia Marine Resources Commission (VMRC) and/or the local wetlands board. Permittees may contact the VMRC at (757) 247-2200 and/or local government office for further information concerning their permit requirements.

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2. A Virginia Department of Environmental Quality (“DEQ”) authorization may be required unless a §401 Water Quality Certification has been provided for this RP, by the State Water Control Board, which certification serves as a determination that activities that qualify for this RP meet the requirements of the Virginia Water Protection Permit Regulation. Any conditions which are made part of an applicable DEQ 401 certificate will automatically become part of the Corps authorization.

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3. Authorizations under this RP also require that permittees ensure that projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (“the Act”) (Virginia Code 10.1-2100 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq.). Authorizations under this RP do not obviate state or local government authority or responsibilities pursuant to the Act or any State or local law or regulation.

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### III. PROCEDURES:

The following special conditions are proposed for this regional permit:

1. The permittee must notify the District Commander and include the following information in such notification:

- a. Name, address and telephone number of the prospective permittee;
- b. Location of the proposed project, including vicinity map;
- c. Brief description of the proposed project, including methods of work, and the project purpose;
- d. A plan view and cross section view of the proposed project, including dimensions;
- e. Location, and design, if applicable, of the disposal area for the excavated material; and.
- f. A description of the location, extent, and type of wetlands and/or waters to be impacted by the proposed work.

Deleted: Types of projects which would qualify for this regional permit include, but are not limited to, the following:¶

¶<#>Activities involving the removal of sediment and debris where such an activity would prevent loss of property or to reduce flooding and/or erosion. This is especially necessary after a catastrophic event, including flooding, fire, windstorm, etc. However, this Regional Permit will not authorize any rechannelization, channel widening, deepening, straightening, or levee construction.¶

¶<#>Maintenance dredging of serviceable impoundments, including stormwater management facilities, detention and retention ponds, flood control structures, private and public lakes and ponds, etc. to reestablish their original design contours and capacity.¶

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2. If proposed work in a non-tidal stream is necessary to correct damage from a flood, and will occur within six months of that flood, and will not affect more than 500 linear feet of the stream, applicants may not need to submit any written information to the Corps to qualify for this RP. Instead, an applicant may contact the nearest Corps Regulatory Office by telephone and describe the nature and location of the work. The Corps project manager may either authorize the work over the telephone, or schedule a site visit to consider and determine whether to authorize such work.

### IV. SPECIAL CONDITIONS:

1. The work must not cause the loss of more than 1/10 acre of wetlands and must be part of a "single and complete project". A wetland delineation conducted in accordance with the 1987 US Army Corps of Engineers Wetland Delineation Manual should be accomplished and included in any materials for consideration of qualification under this RP.

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2. The work must be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act ("CWA").

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3. If a 401 water quality certification, with conditions, has been issued for the project by the State of Virginia, it is a special condition of this RP that the permittee must comply with the conditions specified in the certification.

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4. After review of the available information, the District Commander will determine if further coordination, relative to State trout waters, endangered and threatened species and their critical habitat, and/or cultural and historic resources, is warranted. Proposed activities involving State trout waters will be coordinated with the Virginia Department of Game and Inland Fisheries as part of the Corps' review. Proposed activities in riffle pool complexes or affecting greater than 500 linear feet of stream will be coordinated with the Environmental Protection Agency ("EPA") as part of the Corps' review.

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5. The work shall not be carried out until notified in writing by the District Commander that the work qualifies for this RP. The notification requirement may be waived for proposed discharges of dredged and/or fill material into waters and/or wetlands that otherwise satisfy the conditions of this RP when the Governor of Virginia declares an emergency due to the effects of natural disasters. However, permittees that performs work under these conditions must submit a signed certification to the appropriate Corps office within 30 days of completion of the work along with the following information:

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- A statement that the work was performed in compliance with the conditions contained in this Regional Permit.
- A location map and plan and section views of the work performed.

6. The proposed general and special conditions that are part of this RP are listed below.

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~~7. This permit will not be valid until the property owner obtains a certificate or a waiver from the Virginia Department of Environmental Quality. Any conditions which are made part of your Virginia Department of Environmental Quality 401 certificate will automatically become part of your Corps authorization. In addition, before work begins, you should obtain a permit from the Virginia Marine Resources Commission.~~

Comment [REG2]: This paragraph has been omitted here and added to Section II above.

## V. SPECIAL CONDITIONS FOR DISCHARGES:

1. If the activity involves a discharge of dredged or fill material, the discharge must be accomplished in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the CWA and published in 40 CFR 230.

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2. No discharge of dredged or fill material may consist of unsuitable material (e.g.: trash, debris, car bodies, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA).

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3. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.

4. No discharge of dredged or fill material may occur in areas of concentrated shellfish production.
5. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
6. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.
7. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
8. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.

## **VI. GENERAL CONDITIONS:**

The following conditions apply to all activities authorized under Regional General Permits (RGP).

1. **Geographic jurisdiction.** This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. **Compliance Certification.** A Certificate of Compliance must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1096 within 30 days of completion of the project.
3. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
4. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Norfolk District.
5. **Discretionary authority.** The Norfolk District Corps of Engineers District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
6. **Single and complete projects.** This RGP shall only be applied to single and complete projects. For purposes of this RGP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility.
7. **Multiple general permit authorizations.** This Regional Permit may be combined with any Corps general permits (including Nationwide (NWP) or Regional Permits (RGP) for a single and complete project, as long as the acreage loss of waters of the United States authorized by the NWPs/RGPs does not exceed the acreage limit of the NWP/RGP with the highest specified acreage limit.
8. **Permit on-site.** The permittee shall ensure that a copy of the RGP and the accompanying authorization letter are at the work site at all times. These copies must be made available

to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.

#### **General Conditions Related to National Concerns:**

9. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on, the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the Norfolk District with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit a statement regarding the authorized activity's potential to cause effects to any historic properties listed, or determined to be eligible for listing on, the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources and the National Register of Historic Places. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Norfolk District that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Norfolk District is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, State Historic Preservation Officer, Tribal Historic Preservation Officer, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Norfolk District of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.
10. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
11. **National lands.** Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service.
12. **Endangered species.** No activity is authorized which:

- Is likely to jeopardize the continuing existence of a threatened or endangered species, or species proposed for such designation, as identified under the ESA, or which will destroy or adversely modify the critical habitat of such species
- Would result in a lethal or non-lethal “take” of any threatened or endangered species of fish or wildlife without an incidental take statement from the FWS

Applicants shall include, in their permit applications, information regarding the presence of any federally listed threatened or endangered species or designated critical habitat in the vicinity of the project site that might be affected by the proposed work. Information regarding threatened or endangered species may be obtained directly from the FWS’ Virginia Field Office at 6669 Short Lane, Gloucester, VA 23061 and/or the National Marine Fisheries Service Habitat Conservation Division at James J. Howard Marine Sciences Laboratory, 74 Magruder Road, Highlands, NJ 07732.

13. **Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a “study river” by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.
14. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
15. **Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Norfolk District, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
16. **Floodplains.** All practicable efforts shall be made to conduct the work authorized by this RGP in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
17. **Real estate.** Activities authorized under this RGP do not grant any Corps real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7736 or at the address listed on the front page of this permit.
18. **Environmental Justice.** Activities authorized under this RGP must comply with Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”.
19. **Federal liability.** In issuing this RGP, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RGP; (d) design or construction deficiencies associated with the



permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

#### **General Conditions Related to Minimizing Environmental Impacts:**

20. **Avoidance and minimization.** Discharges of dredged or fill material into waters of the United States shall be avoided and impacts minimized to the maximum extent practicable.
21. **Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
22. **Temporary fills.** All temporarily disturbed waters and wetlands must be restored to their pre-construction contours as soon as they are no longer needed. Once restored to their natural contours, their soil must be mechanically loosened to a depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.
23. **Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
24. **Aquatic life movements.** No authorized activities may substantially disrupt the movement of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. The Norfolk District has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary.
25. **Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.
26. **Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
27. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
28. **Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish spawning areas are conditioned to limit in-stream work within the timeframes recommended by the DGIF.
29. **Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake.

#### **General Procedural Conditions:**

30. **Inspections.** A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative. The permittee shall allow the Norfolk District to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Norfolk District reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under this RGP, as deemed necessary on a case-by-case basis.

31. **Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.
32. **Property rights.** This General Permit does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
33. **Modification, suspension, and revocation.** This RGP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
34. **Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.
34. **Special conditions.** The Norfolk District may impose other special conditions on a project authorized pursuant to this RGP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all general conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
35. **False or incomplete information.** In granting authorization pursuant to this permit, the Norfolk District has relied upon information and data provided by the permittee. If, subsequent to notification by the Norfolk District that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
36. **Abandonment.** If the permittee decides to abandon the activity authorized under this general permit, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Norfolk District.
37. **Transfer of authorization.** In order to transfer authorization under this RGP, the transferee or permittee must supply the Norfolk District with a written request. Such transfer is effective upon written approval by the Norfolk District.
38. **Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

**General Conditions Regarding Duration of Authorizations, Time Extensions for Authorizations, and Permit Expiration:**

39. **Time extensions.** If a permittee is unable to complete the work authorized under this general permit in the time limit provided in the initial authorization, he/she must submit a request for a time extension to the Norfolk District for consideration at least one month prior to the expiration of the permit authorization.
40. **Expiration of this Regional Permit.** Unless further modified, suspended, or revoked, this general permit will be in effect until August 14, 2013. Upon expiration, it may be considered for revalidation. Pursuant to 33 CFR 325.6(c), activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a RGP will remain authorized provided the activity is completed within twelve months of the date of the RGP's expiration, modification, or revocation, unless



discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). Activities completed under the authorization of a RGP which was in effect at the time the activity was completed continue to be authorized by that RGP.

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Date

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Dionysios Anninos  
Colonel, Corps of Engineers  
Commanding

